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FEDERAL COMMUNICATIONS COMMISSION
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August 5, 1994

CONSULTING ENGINEER
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William F. Caton, Acting Secretary
Federal Communications Commission
Washington, DC 20554

Re: In the Matter of
Implementation of Sections
3(n) and 332 of the
Communications Act

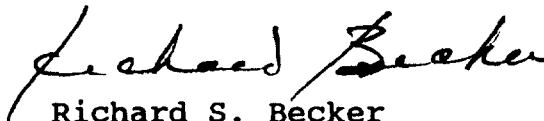
Regulatory Treatment of
Mobile Services
GN Docket No. 93-252

Dear Mr. Caton:

Transmitted herewith on behalf of Range Corporation d/b/a Range Telecommunications ("Range"), is an original and eleven (11) copies of its "Reply to Opposition to Emergency Petition to Dismiss Comments and Reply Comments of the American Mobile Telecommunications Association, Inc." filed with respect to the above-referenced matter.

Should any questions arise with respect to this matter, please communicate directly with this office.

Respectfully submitted,



Richard S. Becker
Attorney for Range Corporation d/b/a
Range Telecommunications

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

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To: The Commission

REPLY TO OPPOSITION TO
EMERGENCY PETITION TO DISMISS
COMMENTS AND REPLY COMMENTS OF THE
AMERICAN MOBILE TELECOMMUNICATIONS ASSOCIATION, INC.

Range Corporation d/b/a Range Telecommunications ("Range"), by its attorneys and pursuant to Section 1.45(b) of the Commission's Rules,¹ hereby replies to the "Opposition To Emergency Petition To Dismiss Comments And Reply Comments Of The American Mobile Telecommunications Association, Inc." ("Opposition") filed by the American Mobile Telecommunications Association, Inc. ("AMTA") on July 29, 1994, in the above-captioned proceeding. AMTA's Opposition was filed in response to the July 21, 1994, Emergency Petition filed by Range requesting emergency Commission action to dismiss the Comments and Reply Comments filed by AMTA in response to the Further Notice Of Proposed Rulemaking in the above-captioned proceeding.² In reply, the following is respectfully shown.

¹47 C.F.R. §1.45(b).

²Further Notice Of Proposed Rulemaking, GN Docket No. 93-252, FCC 94-100 (May 20, 1994). AMTA filed its comments with respect to the FNPRM ("AMTA Comments") on June 20, 1994, and AMTA filed its reply comments with respect to the FNPRM ("AMTA Reply Comments") on July 11, 1994.

1. The issue in this case is simple. Range, like many entities throughout the country, is a small, independent Specialized Mobile Radio ("SMR") entrepreneur and a member of AMTA. As such, Range and other carriers in good faith placed their trust in AMTA as their trade organization and relied upon AMTA to represent the interests of the entire SMR industry before the Commission.

2. In the Comments and Reply Comments filed by AMTA in the above-captioned proceeding, however, AMTA violated this trust by unequivocally supporting a proposal by industry giant, Nextel Communications, Inc. ("Nextel"), to clear 10 MHz of SMR spectrum and ensure that the evacuated spectrum will be licensed exclusively to providers of wide-area SMR service (dubbed "ESMR" by Nextel).³ The Nextel Proposal would benefit only Nextel, its confederate, Motorola Communications, Inc. ("Motorola"), who owns proprietary right to the technology used in Nextel's ESMR operation, and perhaps two or three other huge SMR operators in the country that might be able to meet the extraordinary eligibility requirements specified in the Nextel Proposal.⁴ Even though as late as July 6,

³This proposal will be referred to hereinafter as the "Nextel Proposal." Contrary to assertions made by AMTA in its Opposition, n.3, AMTA's Comments in the above-captioned proceeding supported the Nextel Proposal. See Emergency Petition at 5. AMTA's Reply Comments in the above-captioned proceeding wholeheartedly embraced the Nextel Proposal. See id. at 5-6. Accordingly, Range properly requested in its Emergency Petition that the Commission dismiss both the AMTA Comments and AMTA Reply Comments.

⁴These eligibility requirements were originally specified in Nextel's June 20, 1994, Comments in the above-captioned proceeding. Nextel Comments, p. 16-17. Nextel significantly narrowed these restrictions in Nextel's Reply Comments filed on July 11, 1994.

1994, AMTA claimed in writing that it would not support the Nextel Proposal in AMTA's Reply Comments,⁵ just five (5) days later, AMTA (allegedly on behalf of the entire SMR industry)⁶ filed its Reply Comments unequivocally advocating the Nextel Proposal.

3. In response to AMTA's breach of trust and abandonment of its responsibilities to all of its members, Range had no choice but to file the Emergency Petition seeking immediate Commission action to reject and dismiss AMTA's Comments and Reply Comments in the above-captioned proceeding. Range demonstrated that AMTA's filings represent only the views and interests of Nextel and Motorola -- not the views and interests of the entire SMR industry. Range provided specific facts establishing, inter alia, that the decisions to file the AMTA Comments and Reply Comments were adopted ultra vires in violation of the By-Laws of AMTA because Nextel and Motorola have been able to acquire control of or become "directly or indirectly affiliated" with multiple members of the AMTA Board of Directors.

4. In its Opposition, AMTA resorted to predictable and transparent attempts to deflect Commission consideration of Range's critical allegations. For the sake of thoroughness, Range hereby responds to each of AMTA's assertions:

Nextel Reply Comments, p.12-13.

⁵See Emergency Petition at n.6.

⁶See, e.g., id. at n.7.

- Despite the fact that AMTA admitted that affiliation between members of its Board of Directors is contrary to AMTA's By-Laws,⁷ AMTA failed to provide any specific facts rebutting Range's documented allegations of affiliation and concentration of control in Nextel and Motorola. Blanket denials by AMTA simply are not credible in response to the convincing evidence presented in the Emergency Petition.
- AMTA admitted that the decision to file its Reply Comments was adopted without having waited the seven (7) day waiting period required by Article XI, Section 1(a), of the AMTA By-Laws. AMTA's convenient explanation that the Board "waived" this requirement does not rebut the fact that the decision was adopted ultra vires in violation of the AMTA By-Laws.
- Inexplicably, at no point in its Opposition did AMTA provide any documentation, such as minutes of Board meetings, notices of such meetings or written proxies by Board members, to support AMTA's blatant assertions that it acted in compliance with its own By-Laws.
- AMTA's attempt to characterize Range's allegations as an "intra-organizational dispute[]" that is of no concern to the Commission⁸ is self-serving and inaccurate. AMTA's effort to pressure the Commission to adopt the Nextel Proposal in the name of the entire SMR industry (when, in fact, AMTA's actions were impermissibly taken for the benefit only of Nextel and Motorola) is a matter of vital public interest concern to the Commission. Accordingly, the Commission must consider Range's allegations in the context of the above-captioned proceeding. Moreover, AMTA's attempt to silence Range by suggesting that Range "withdraw from membership and seek representation elsewhere" is insulting and cannot be countenanced.
- AMTA claimed that the antitrust implications of Range's allegations were the sole bailiwick of "the Department of Justice and the Federal Trade Commission and the federal agencies responsible for enforcing the Clayton Act" and that private parties were limited to bringing court actions to raise alleged monopolistic practices.⁹ This assertion is inaccurate. The Commission is vitally concerned with alleged monopolistic practices by Commission licensees and antitrust and competitive considerations have always played an important part in the Commission's efforts to carry out its public

⁷Opposition at 4.

⁸Id. at 2.

⁹Id. at 3.

interest mandate.¹⁰

- AMTA's attempt to dismiss the Range Emergency Petition as a publicity stunt to gain "visibility"¹¹ is incorrect. Range's Emergency Petition for the first time brings to the Commission's attention allegations that the entire SMR industry has been aware of. The Commission must consider these critical allegations immediately in the context of the above-captioned proceeding.

Having disposed of AMTA's diversionary tactics, Range must emphasize that the Commission should not be duped by AMTA's condescending, off-handed treatment of Range's Emergency Petition. The underlying truth of Range's allegations remains unrebutted -- the positions taken in the AMTA Comments and AMTA Reply Comments in the above-captioned proceeding do not represent the views of the entire SMR industry. Instead, AMTA's pleadings represent only the interests of Nextel and Motorola, who have been able to impermissibly acquire control of AMTA and its Board of Directors.

¹⁰See 47 U.S.C. §§313, 314; United States v. FCC, 652 F.2d 72 (D.C.Cir. 1980); National Association of Regulatory Utility Commissioners v. FCC, 525 F.2d 630 (D.C.Cir. 1976); RKO General, Inc., 78 FCC2d 1 (1980); Letter dated May 13, 1994 regarding AT&T/McCaw Merger Applications, File No. ENF 93-44, 9 FCC Rcd 2610 (1994); see also Report and Order, CC Docket No. 91-33, 7 FCC Rcd 4006 (1992); Report and Order, CC Docket No. 93-34, 7 FCC Rcd 4028 (1992).

¹¹Opposition at n.4.

WHEREFORE, for all of the foregoing reasons, Range respectfully reiterates its emergency request that the Commission act immediately to: (1) reject and dismiss the AMTA Comments and AMTA Reply Comments and expunge those documents from the record in the above-captioned proceeding; and (2) explicitly state that Commission decision-making in the above-captioned proceeding will not in any way be influenced by the positions taken by AMTA.

Respectfully submitted,

**RANGE CORPORATION D/B/A
RANGE TELECOMMUNICATIONS**

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Date: August 5, 1994

CERTIFICATE OF SERVICE

I, Vicky Chandor, a secretary in the law firm of Becker & Madison, Chartered, hereby certify that I have on this 5th day of August, 1994, sent by First Class United States mail, postage prepaid, copies of the foregoing **"REPLY TO OPPOSITION TO EMERGENCY PETITION TO DISMISS COMMENTS AND REPLY COMMENTS OF AMERICAN MOBILE TELECOMMUNICATIONS ASSOCIATION, INC."** to the following:

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